87-7000 (1)

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No. 87-2109

Supreme Court, U.S.
FILED
OCT 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1987

IN RE: DAN GOODMAN

PETITION FOR AN EXTRAORDINARY WRIT TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Mr. Daniel Joseph Goodman, Pro Se

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5 cp

QUESTIONS PRESENTED

1. Is a judgement or decision of a court based upon a memorandium decision of another court a precedent?

2. Can a note which is a promise to pay (or a promise to make payment) be also payment?

3. Does the Constitution grant implicit powers to Congress? And does the Constitution place exceptions on the powers expressly granted to Congress or does it place explicit prohibitions on Congress?

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McCullough v. Maryland: 17 U.S. 323-325 . . . . . 18, 20,21

Peter v. Beverly: 35 U.S. 533, 568 . 16

OTHER:

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OPINIONS BELOW

Petitioner filed his complaint against the Treasurer of the United States and the Secretary of the Treasury of the United States in the United States District Court for the Southern District of Florida on May 8, 1986 (86-0991: Civ-Aronovitz) seeking a declaratory judgement, pursuant to 28 U.S.C. 2201, regarding Petitioner's right to payment in silver coin of the United States from the Treasury for United States notes and Federal Reserve notes in Petitioner's possession and establishing such obligation on the part of the Treasurer and Secretary of the Treasury; the makers, to make such payment. In his complaint, Petitioner also sought specific performance, pursuant to 28 U.S.C. 1361, on the part of the Treasurer and Secretary of the Treasury to make such payment in silver coin for Petitioner's notes.

District Court Judge Sidney M. Aronovitz dismissed Petitioner's complaint in his omnibus order dated October 16, 1986 stating that: (See App. A, Pg. A-1)

> This Court lacks subject matter jurisdiction and for failure to state a claim upon which relief can be granted. See Juilliard v. Greenman, 110 U.S. 421 (1884), Milam v. United States, 524 F.2d. 629 (9th Cir. 1974), United States v. Gardiner, 531 F.2d. 953 (9th Cir. 1976) and United States v. Anderson, 584 F.2d. 369 (10th Cir. 1978).

Petitioner filed his motion to vacate judgement; motion #5, on October 27, 1986 stating a claim for which relief could be granted. Judge Aronovitz denied Petitioner's motion on November 21, 1986 stating that: (See App. B, Pg. A-4)

> The grounds upon which the Motion is premised were specifically addressed by the Court in its order of dismissal, dated October 16, 1986. Lack of subject matter jurisdiction, among other grounds, subsumes all pending motions into the order of dismissal.

Petitioner filed his motion to vacate judgement; motion #6, on December 9, 1986

manifesting both original and exclusive jurisdiction over the subject matter onto the District Court. On March 17, 1987 Petitioner filed his motion to amend; motion #7, amending his motion to vacate judgement; motion #6. On March 31, 1987 Judge Aronovitz issued his order of denial stating that: (See App. C, Pg. A-7)

> Plaintiff's motion to vacate judgement and motion to amend be, and the same are, hereby DENIED.

Notice of appeal was filed by Petitioner at the District Court on April 23, 1987. The 11th Circuit Court of Appeals, however, dismissed it by order dated August 6, 1987 stating, in part, that: (See App. D, Pg. A-9)

> Appellant's second motion to vacate (judgement; motion #6) did not toll the time for filing a notice of appeal.

As aforementioned, Petitioner's second motion to vacate judgement; motion #6, manifested both original and exclusive jurisdiction over the subject matter onto the District Court.

The Appellate Court did not show in its order how it came to this conclusion. In addition, the Appellate Court remanded Petitioner's case to the District Court "with instructions to vacate its March 31, 1987 order denying the second motion."

JURISDICTION

District Court Judge Sidney M. Aronovitz issued his omnibus order including order of dismissal on October 16, 1986. Such order was entered on the docket on October 22, 1986. In addition, Judge Aronovitz's order denying Petitioner's motion to vacate judgement; motion #5, dated November 21, 1986 was entered on the docket on November 24, 1986 and his order denying Petitioner's motion to vacate judgement; motion #6, and motion to amend; motion #7, dated March 31, 1987 was entered on the docket on April 2, 1987. The jurisdiction of this Court to review, by writ of certiorari, is provided under 28 U.S.C. §1651/a.

STATEMENT OF CASE

Petitioner's case is an action based on contract. The parties to the action are the Treasurer of the United States and the Secretary of the Treasury of the United States. The contracts involved are United States notes and Federal Reserve notes.

On January 31, 1985, Petitioner sent to the Secretary of the Treasury, by certified mail, his letter for payment on United States notes for 25 dollars and Federal Reserve notes for 25 dollars. In his letter, Petitioner related to the Secretary of the Treasury that:

> According to the United States Supreme Court I can redeem them (i.e., the notes) for coined dollars of the United States. These coined dollars, in addition, are to be a certain quantity in weight and fineness of gold or silver (1. Bank v. Supervisor: 74 U.S. 26). (And) that a dollar is a silver coin of fixed weight and fineness, is-

sued and made current by Congress, its weight being 371.25 grains (or .7734 ounces*) at 100% purity.

*Note: 480 grains = 1 ounce, thus,

371.25 grains ÷ 480.00 grains =

.7734(375) ounces.

On April 5, 1985 Mr. Russell L. Munk, Assistant General Counsel to the Department of the Treasury responded stating, in part, that the "Treasury is unable to make such redemption."

Additional correspondence was sent by Petitioner, by certified mail, on April 19, 1985; May 18, 1985; and July 18, 1985 to Mr. Munk, who in return responded on April 30, 1985; June 5, 1985; and August 1, 1985.

With respect to Petitioner's letters of May 18, 1985 and July 18, 1985; Petitioner requested a notarized statement of protest signed by the Secretary of the Treasury as well as the Treasurer himself; to wit:

> You mentioned Assistant General Counsel Munk that the Treasury Department is unable to make such redemption.

> I would like a notarized statement signed by the Secretary of the Treasury as well as the Treasurer, himself, stating that the Treasury of the United States is unable to redeem those United States notes and Federal Reserve notes, as shown in my letter of January 31st, with silver coin of the United States (Page 4, Letter of May 18, 1985).
>
> and
>
> In my letter of May 18th, I wanted; in original form, a notarized statement signed by the Secretary of the Treasury as well as the Treasurer, himself, stating that the Treasury of the United States is unable to redeem those United States notes and Federal Reserve notes, as shown in my letter of January 31st, with silver coin of the United States. I still want that protest Assistant General Counsel Munk.
>
> I expect the protest by or on August 6, 1985. If it is not received by that date Assistant General Counsel Munk, I will construe your express refusal of payment to be that coming from an apparent agent of the Secretary of the Treasury as well as the Treasurer, and, will construe that my demand for payment has been implicitly dishonored by the Secretary of the Treasury and the Treasurer (Page 4, Letter of July 18, 1985).

Petitioner's request for such statement was ignored by Mr. Munk.

As regards his final letter of August 1, 1985, Mr. Munk states:

> In three letters to you dated April 5, April 30, and June 5, I explained that the United States Treasury is unable to redeem the notes in silver coin. I have nothing to add to those explanations.

Petitioner filed his complaint in the United States District Court for the Southern District of Florida on May 8, 1986.

REASONS FOR GRANTING THE WRIT

I. The United States District Court For The Southern District Of Florida Refused To Exercise Jurisdiction Over The Subject Matter

Petitioner, in his Complaint of Judicial Misconduct, cited the following:

> On Judge Aronovitz's order denying Appellate/ Plaintiff's motion to vacate judgement, motion #6, and motion to amend (motion #7) dated 3/31/87 ... lack of subject matter jurisdiction was implicitly reaffirmed. This, in contrary to Appellant/ Plaintiff's motion to vacate judgement, motion #6, which manifests both original and exclusive jurisdiction over this subject matter onto the district court.

Petitioner, in his motion to vacate judgement; motion #6, stated that the District Court had original jurisdiction:

> The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of any civil action or claim against the United States founded upon any express or

implied contract with the United States — 28 U.S.C. 1346/a/2.

> When an action against the United States or its agencies is founded ... upon any express or implied contract with the United States this section giving the district courts original jurisdiction, concurrent with the court of claims, is normally relied upon, for it operates both as a waiver of sovereign immunity and a grant of jurisdiction — 28 U.S.C. 1346 (POCKET INSERT, PAGE 6, NOTE 16, ENTRY 3). (Page 2 of motion)

— and exclusive jurisdiction over the subject matter:

> District courts have exclusive jurisdiction over actions in which only injunctive or declaratory relief, but no damages are sought — 28 U.S.C. 1346 (POCKET INSERT, PAGE 11, NOTE 19, ENTRY 9). (Pages 2 and 3 of motion)

However, Judge Aronovitz refused to exercise jurisdiction over Petitioner's cause. He instead, "buried" Petitioner's cause by dismissing it.

II. The 11th Circuit Court Of Appeals Refused To Review The Appeal

At the Appellate Court, Circuit Court Judges Tjoflat, Hill, and Johnson dismissed Petitioner's appeal by written order of August 6, 1987 on the basis that Petitioner's second motion to vacate judgement; motion #6, was untimely served. However, Petitioner did timely serve his second motion to vacate judgement; motion #6. It is to be noted that this motion established both original and exclusive jurisdiction over Petitioner's cause onto the District Court.

Preceding this order, Petitioner received from the Clerk's Office the following "Letter of Jurisdictional Questions" (App. E, Pg. A-11). The letter of June 19, 1987 is signed by Joyce Tuggle, Deputy Clerk. The purpose presented was to obtain information to determine if the Court of

Appeals had jurisdiction to hear my appeal. However, the real reason was to induce petitioner into thinking and mislead Petitioner into believing that the Court of Appeals did not have jurisdiction. See Petitioner's Response to Jurisdictional Questions —— 06/19/87 and letter of 06/29/87 (App. F, Pg. A-14). Petitioner adds that his second motion to vacate judgement; motion #6, was received by the District Court on Monday, December 9th/ DAY 9 and filed by the District Court on Tuesday, December 9th/ DAY 10.

The Appellate Court has, by this action, refused to review Petitioner's appeal. By dismissing Petitioner's appeal, the Appellate Court has also "buried" Petitioner's cause.

III. A Memorandium Case Has Been Treated As A Precedent

The Treasurer and Secretary of the Treasury have relied on Milam v. United States: 524 F.2d. 629 (1974) - 9th Circuit Court - to support their claim that Petitioner's notes cannot be redeemed in precious metal. However, Petitioner, in his complaint, his motion to deny; motion #4, as well as his motion to vacate judgement; motion #5, established that the case of Milam can not be used as a precedent since the case is a memorandium decision:

> (A) memorandium decision is not judgement nor decision of court but merely announcement of court's intended decision and is not appealable order— Black's Law Dictionary, 5th edition, Page 888.
>
> (A) precedent is an adjudged case or decision of a court considered as furnishing an example or authority for an identical or similar case afterwards arising of a similar question of law— Ibid, Page 1059.

Because Milam is a memorandium decision,

it cannot be used as a precedent for the purpose of stare decisis since the case is not res judicata or res decisis.

Judge Aronovitz, however, cited Milam as a precedent in his omnibus order dated October 16, 1986. He also reaffirmed the case implicitly in his order denying Petitioner's motion to vacate judgement, motion #5, dated November 21, 1986 and in his order denying Petitioner's motion to vacate; motion #6, and motion to amend; motion #7, dated March 31, 1987.

IV. An Exception To A Precedent Has Not Been Followed

The Treasurer and Secretary of the Treasury have also relied on Juilliard v. Greenman: 110 U.S. 421 (1884) to support their claim that Petitioner's notes do not have to be redeemed in precious metal.

However, Petitioner in his motion to amend; motion #7, cited and cited from Peter v. Beverly: 35 U.S. 533, 568 (1836) the following:

> It is a settled doctrine that the acceptance of a negotiable note for an antecedent debt will not extinguish the debt, unless it is expressly agreed that it is received as payment.

Since this case passed sub silentio in Juilliard (as well as all the other legal tender cases), Juilliard cannot be used as a precedent:

> Where a certain point of law is not brought to the view of the court in determining a case, the decision is not a precedent, calling for the same decision in a similar case in which the point is brought before the court— Words and Phrases, P.ed., Volume 33, Page 373 citing The Edward: 14 U.S. 261; 1 Wheat 261; 4 L. Ed. 86.

Judge Aronovitz, however, reaffirmed Juilliard implicitly in his order denying Petitioner's motion to amend; motion #7, and motion to vacate judgement; motion #6, dated March 31, 1987.

Petitioner adds that in his motion to

amend; motion #7, he cited and cited from the case of Don E. Williams Company v. Commissioner of Internal Revenue: 97 S.Ct. 858; 429 U.S. 582-583 (1977) the following:

> The promissory note, even when payable on demand and fully secured, is still, as its name implies only a promise to pay, and does not represent the paying out or reduction of assets.

V. Petitioner's Case Presents A Valid Understanding Of The Constitution Not In Accord With Current Interpretations Of It

The Treasurer and Secretary of the Treasury have asserted that the federal government has, in addition to those powers granted expressly in the Constitution, implicit or implied powers; that is, those auxiliary powers that are "necessary and proper" to carrying out of those powers enumerated in the Constitution which are

vested in the federal government (McCullough v. Maryland: 17 U.S. 323-325 **1819**). Petitioner, however, in his motion for mandatory injunction; motion #3, established that the federal government does not have any implicit powers since the concept of implied powers does not exist in the Constitution:

> It is a principle universally agreed upon, that all powers not given are retained. Where by the Constitution, the general government has general powers for any purpose, its powers are absolute. Where it has powers with some exceptions, they are absolute only as to those exceptions. In either case, the people retain what is not conferred on the government, as it is by their positive grant that it has any of its powers— George Nicholas; The Elliot Debates, Volume III, Page 246. (SEE NOTE 1 BELOW)

Note 1:

"The powers not delegated to the United States by the Constitution ... are reserved ... to the people— Amendment 10, United States Constitution."

The Constitution enumerates only grants of powers to the federal government. What

(Article I, Section 8, Clause 18 of the United States Constitution) runs in the following words: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The (reader) (SEE NOTE 2 BELOW) will perceive that the Constitution had enumerated all the powers which the general government should have, but did not say how they were to be exercised. Does this give any new power? I say not. Suppose it had been inserted, at the end of every power, that they should have power to make laws to carry that power into execution; would this have increased their powers? If, therefore, it could not have increased their powers, if placed at the end of each

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appear to be prohibitions in Article I, particularly, at Section 9, are in fact exceptions, or restrictions, on the powers granted to the Congress in Article I, Section 8. For example, compare 1) Article I, Section 9, Clause 6 with Article I, Section 8, Clause 3; 2) Article I, Section 9, Clauses 4 and 5 with Article I, Section 8, Clause 1; 3) Article I, Section 9, Clause 3 with Article I, Section 8, Clause 18; and 4) Article I, Section 9, Clause 2 with Article I, Section 8, Clause 9.

Note 2:

The original word was "committee."

> power, it cannot increase them at the end of all. This clause only enables them to carry into execution the powers given to them but gives them no additional power— Ibid, Pages 245-246.

The concept of implicit or implied powers, therefore, does not exist in the Constitution. Indeed, Congress either has been granted a power or it does not have it. "In disputes between Congress and the people, the proposition (is) —— Is the disputed right enumerated? If not, Congress cannot meddle with it— Again, Page 246."

The case of McCullough v. Maryland established that Congress has implicit/ implied powers; that is, those auxiliary powers that are "necessary and proper" to carrying out those powers enumerated in the Constitution which are vested in the federal government. George Nicholas's exposition on Article I, Section 8, Clause 18, however, passed sub silentio in McCullough, thus McCullough cannot be

used as precedent on this point. In addition, George Nicholas's exposition in The Elliot Debates constitutes the spirit of the United States Constitution, and consequently, is the Supreme Law of the Land. As such, McCullough v. Maryland is repugnant to the Constitution on this point; and because of this, is null and void.

In forming our Constitution, our Forefathers gave to the national government express grants of power only, and by doing so, gave us a limited form of national government:

> The powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction— James Madison: The Elliot Debates, Volume III, Page 95.

In his omnibus order, dated October 16, 1986, Judge Aronovitz denied Petitioner's motion for mandatory injunction; motion #3, as moot in view of his dismissal of Petitioner's complaint.

CONCLUSION

Petitioner has considered petitioning this Court for a writ of supervisory control since gross injustice has been done to Petitioner's cause by the District Court refusing to exercise jurisdiction and by the Appellate Court refusing to review the appeal. However, Petitioner believes that this would not "cure" the situation. The Court may find itself, if it issued such writ, supervising the proceedings in the Appellate Court, provided Petitioner didn't encounter further prejudicial treatment of his cause at the District Court. Petitioner sees this as an unnecessary expenditure of precious man-hours and other resources on the part of the Court, time and resources which could be spent on more important matters.

In addition, Petitioner's case is of

very great significance for it presents a valid understanding of the Constitution not in accord with current interpretations of it, it exposes errors which have been made in applying law, and it covers a serious matter which needs to be reconsidered by this Court.

PRAYER

Petitioner, therefore, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States District Court for the Southern District of Florida commanding the District Court to certify and send up to this Court, on a day to be designated, a full and complete transcript of

the record and of all proceedings in the District Court, to the end that this case may be reviewed and determined by this Court; that the Appellate Court refund to Petitioner, promptly and without delay, his docket and filing fee for his appeal; and that Petitioner be granted such other and further relief as may be necessary and proper.

DAN GOODMAN, Pro Se
Petitioner

APPENDIX A

United States District Court

Southern District Of Florida

Case No. 86-0991-Civ-Aronovitz

Dan Goodman,

Plaintiff,

vs.

Treasurer of the United States and Secretary of the Treasury of the United States,

Defendants.

Omnibus Order Including Order Of Dismissal

(Filed October 22, 1986)

THIS CAUSE came before the Court upon the following motions of the parties:

1. Defendant's, United States of America's, motion to dismiss, or in the alternative, for summary judgement, filed August 6, 1986.

2. Plaintiff's motion for preventive and permanent injunction filed on July 29, 1986.

3. Plaintiff's motion for mandatory injunction (motion #2), filed on August 8, 1986.

4. Plaintiff's motion for mandatory injunction (motion #3), filed on August 8, 1986.

The Court has considered the above-mentioned motions, the memoranda of law in support of, and in opposition to, said motions, the pertinent portions of the record, the applicable law, and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED as follows:

1. That Defendant's motion to dismiss be, and the same is, hereby GRANTED. The above-mentioned cause is hereby DISMISSED inasmuch as this Court lacks subject matter jurisdiction and for failure to state a claim

upon which relief can be granted. See Juilliard v. Greenman, 110 U.S. 421 (1884), Milam v. United States, 524 F.2d 629 (9th Cir. 1974), United States v. Gardiner, 531 F.2d 953 (9th Cir. 1976), and United States v. Anderson, 584 F.2d 369 (10th Cir. 1978).

2. That Plaintiff's first, second and third motions for permanent injunction be, and the same are, hereby DENIED AS MOOT in view of the dismissal of this action.

DONE AND ORDERED in Chambers at Miami, Florida, this 16th day of October, 1986.

/s/ Sidney Aronovitz
United States District Judge

cc: Wendy Jacobus
Daniel J. Goodman

APPENDIX B

United States District Court

Southern District Of Florida

Case No. 86-0991-Civ-Aronovitz

Dan Goodman,

Plaintiff,

vs.

Treasurer of the United States and Secretary of the Treasury of the United States,

Defendants.

Order Denying Motion To Vacate Judgement

(Filed November 24, 1986)

THIS CAUSE came before the Court upon Plaintiff's motion to vacate judgement filed on October 27, 1986. The Court has considered the motion, the supporting memorandum of law, the pertinent portions of the record, the applicable law, and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED

that Plaintiff's motion to vacate judgement be, and the same is, hereby DENIED inasmuch as the grounds upon which the motion is premised were specifically addressed by the Court in its Order of Dismissal, dated October 16, 1986. Lack of subject matter jurisdiction, among other grounds, subsumes all pending motions into the Order of Dismissal.

DONE AND ORDERED in Chambers in Miami, Florida, this 21st day of November, 1986.

/s/ Sidney Aronovitz
United States District Judge

cc: Dan Goodman, Pro Se
Wendy Jacobus, AUSA

APPENDIX C

United States District Court

Southern District Of Florida

Case No. 86-0991-Civ-Aronovitz

Dan Goodman,

Plaintiff,

vs.

Treasurer of the United States and Secretary of the Treasury of the United States,

Defendants.

Order Denying Plaintiff's Motion To Vacate Judgement And Motion To Amend

(Filed April 2, 1987)

THIS CAUSE came before the Court upon Plaintiff's motion to vacate judgement and motion to amend. The Court has considered the motion, the supporting memorandum of law, the pertinent portions of the record, the applicable law, and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED

that Plaintiff's motion to vacate judgement and motion to amend be, and the same are, hereby DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st day of March, 1987.

/s/ Sidney Aronovitz
United States District Judge

cc: Dan Goodman, Pro Se
Wendy Jacobus

APPENDIX D

The United States Court Of Appeals

For The Eleventh Circuit

No. 87-5402

Dan Goodman,

Plaintiff-Appellant,

vs.

Treasurer of the United States and Secretary of the Treasury of the United States

Defendants-Appellees.

Order

(Filed August 6, 1987)

Before: Tjoflat, Hill and Johnson; Circuit Judges

BY THE COURT:

Appellant's second motion to vacate did not toll the time for filing a notice of appeal. Wansor v. George Hantscho Co., Inc., 570 F.2d 1202, 1206 (5th Cir. 1978). Appellant's notice of appeal was, therefore, untimely from the November 21, 1986, order denying his first motion to vacate. Fed.R. App.P. 4(a)(1). Moreover, because the second motion was untimely, the district court was without jurisdiction to entertain it. United States v. One Remington 12 Gauge Shotgun, etc., 709 F.2d 1468, 1469 (11th Cir. 1983). Accordingly, this case is remanded to the district court with instructions to vacate its March 31, 1987, order denying the second motion. The appeal is dismissed.

APPENDIX E

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303
June 19, 1987

Dan Goodman, Pro Se
1213 William Street
Apartment #1
Key West, Florida 33040

Re: No. 87-5402
Dan Goodman -v- Treasurer of the United States, et al.
D.C. No. 86-0991- CIV-ARONOVITZ
Notice of Appeal Date: April 23, 1987

Dear Counsel or Parties

The captioned case has been docketed in this Court. After review of the district court docket entries, order and/or judgement, and the notice of appeal referenced above, it appears that this Court may lack jurisdiction over this appeal. If it is determined that this Court is without jurisdiction, this appeal will be dismissed.

The parties are requested to simultaneously advise the Court in writing within 14 days from the date of this letter, their position regarding the jurisdictional question(s) set forth on the attached page. An original plus three copies of any responses desired should be filed. Requests for extensions of time to file a response may not

be entertained. Do not address any other issues on appeal at this time.

After this 14-day period, this Court will consider any response(s) received and will identify and request from the district court any portion of the record not already on filed that may be required to resolve the jurisdictional issue(s). If a transcript has been ordered in the matter (See F.R.A.P. 10(b)), it is the appellant's responsibility to make arrangements with the responsible court reporter for postponing preparation of the transcript pending determination of the jurisdiction question(s) if this is desired. The parties will be advised by this office of the Court's determination and of any further actions required of them.

All counsel desiring to appear in this case must sign and return the enclosed appearance form within 14 days from this date pursuant to 11th Cir.R.7. Only persons who return an appearance form will be noted on the docket sheet in this case. Persons appearing pro se need not complete and return an appearance form.

Sincerely,

MIGUEL J. CORTEZ, Clerk

By: /s/ Joyce Tuggle
Deputy Clerk

Jurisdictional Question(s)

1) Whether the second motion to vacate judgement filed on December 9, 1986 did not toll the time to appeal because untimely and successive? Fed.R.App.P. 4(a)(4); Wansor v. George Hantscho Co., Inc., 570 F2d. 1202 (5th Cir.), cert. denied, 439 U.S. 953 (1978).

2) Whether the district court lacked authority to rule on the December 9, 1986 motion to vacate because it was served more than 10 days after entry of the final order of dismissal? Browder v. Director, Department of Corrections, 434 U.S. 257, 263 n.7, 98 S.Ct. 556, 560 n.7, 54 L.Ed. 2d. 521 (1978)

3) If the district court lacked authority to rule on the motion, whether this Court also lacks authority? Katz v. Briggs, 550 F2d. 310, 311 (5th Cir. 1977).

4) Whether the notice of appeal is untimely to appeal from the October 16, 1986 final judgement or from the denial of plaintiff's October 27, 1986 motion to vacate judgement because filed more than sixty days thereafter?

Order dismissing action entered on docket: 10/22/86

Order denying motion to vacate judgement entered on docket: 11/24/86

Notice of appeal filed: 4/23/87

APPENDIX F

The 11th Circuit Court of Appeals

of the United States

Common Law Action — Ex Contractu

Cause Number: 87-5402

Dan Goodman

Appellant-Plaintiff

v.

Treasurer of the United States and
Secretary of the Treasury of the
United States

Appellee-Defendants

Response to Jurisdictional Questions —
06/19/87

(Received July 1, 1987)

Appellant-Plaintiff, Dan Goodman, responses to the jurisdictional questions presented in Clerk's letter of June 19, 1987 as follows:

Appellant-Plaintiff did serve his (second) motion to vacate judgement, motion #6, within ten days after entry of order of dismissal. F.R.C.P. 6/a states:

> (Effective on August 1, 1985.) In computing any period of time presecribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in the rule, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Thanksgiving Day.

Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

— West Publication Company: 1985 edition —

Judge Aronovitz's order denying Appellant-Plaintiff's (first) motion to vacate judgement, motion #5, was entered on the docket on 11/24/86.

Appellant-Plaintiff's (second) motion to vacate judgement, motion #6, was served on December 6, 1986.

Applying Rule 6/a, Appellant-Plaintiff's (second) motion to vacate judgement, motion #6, was served in 9 days, determined as follows:

	S	M	T	W	T	F	S
Nov 1986		24	25	26	27[a]	28	29[b]
		0	1	2	-	3	-
	30[c]						
	-						
Dec 1986		1	2	3	4	5	6
		4	5	6	7	8	(9)

a: legal holiday - Thanksgiving
b: Saturday.

c: Sunday.

In response to Question #2 then, the district court had authority to rule on Appellant-Plaintiff's (second) motion to vacate judgement, motion #6, since it was served in less than 10 days; specifically, 9 days, after entry of the order of dismissal.

Based on the preceding answer to Question #2, Appellant-Plaintiff response to the remainding questions are that they are non-sequitur. Since Appellant-Plaintiff's (second) motion to vacate judgement, motion #6, was timely served, computation of time to file notice of appeal began from Judge's Aronovitz's order denying Appellant-Plaintiff's (second) motion to vacate judgement; motion #6, and motion to amend; motion #7, which was entered in the docket on 4/2/87. Appellant-Plaintiff filed his notice of appeal on 4/23/87, giving a total of 21 days.

/s/ Dan Goodman
Dan Goodman, Pro Se

1213 William Street
Apartment #1
Key West
Florida 33040

June 29, 1987

United States Postal
Registered Mail Receipt
#R230-903-317

Ms. Joyce Tuggle
Deputy Clerk
Office of the Clerk
United States Courts of Appeals
Eleventh Circuit
56 Forsyth Street - N.W.
Atlanta, Georgia 30303

Dear Ms. Tuggle,

Enclosed is my response to the jurisdictional questions presented in your letter of June 19, 1987.

The questions enclosed with your letter were all bias. The purpose of your letter

was to obtain information to determine if the Court had jurisdiction to hear my appeal: "If it is determined that this Court is without jurisdiction, this appeal will be dismissed." However, all the questions enclosed with your letter presumed that the Court does not have jurisdiction since:

a) my (second) motion to vacate judgement, motion #6, was served after 10 days from the entry of the final order of dismissal — question 2, which;

b) gave the district court no authority to rule on it — question 2, which;

c) gives this Court no authority to hear the appeal — question 3, since;

d) the time to file an appeal started from 11/24/86 — question 4, which;

e) gives a total of more than 60 days, and as such, makes the appeal untimely resulting in no jurisdiction — question 1.

Even the order of the questions suggests prejudice on the part of the one who compiled (and prepared, if the same person,) them.

Since my (second) motion to vacate judgement, motion #6, is the crux of this inquiry into jurisdiction, the first, and only question in my mind, should have been:

On what date was your (second) motion to vacate judgement served?

It is to be noted that none of the questions enclosed with your letter gave the date that my motion was served, indicating bias if not

also prejudice. Further, this question could have been answered by the clerk of the district court himself.

It is to be added that Appellee-Defendants made no objection to my (second) motion to vacate judgement, motion #6, being allegedly served after 10 days from entry of order of dismissal. Nor did the district court judge.

On May 26, 1987 I sent, by registered mail, my motion to postpone (filing brief) with a copy to be stamped and returned to me in a provided self-addressed and stamped envelope. My motion was received by your office on May 28, 1987. It is now June 29, 1987 and I have not received my stamped copy.

On May 11, 1987 I sent, by registered mail, my complaint of judicial misconduct, which was received by your office on May 13, 1987. After being delayed for 13 days it was transmitted to the Chief Judge on May 26, 1987. It is now June 29, 1987. 28 U.S.C. 372/c/3 and c/4/d states:

> After expeditiously reviewing the complaint, the chief judge, by written order stating his reasons, may — ..., (and)
>
> If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

I have not received any order or written notice from the chief judge regarding my complaint.

Sincerely,

/s/ Dan Goodman
Dan Goodman, Pro Se

1213 William Street
Apartment #1
Key West
Florida 33040